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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

XIA SUN,

Plaintiff and Respondent,

v.

JU-TSUN CHANG,

Defendant and Appellant.

B293061

(Los Angeles County
Super. Ct. No. BC561165)

APPEAL from an order of the Superior Court of
Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed.
Gary Hollingsworth for Defendant and Appellant.
Klapach & Klapach and Joseph Klapach; Joshua P.
Friedman & Associates and Joshua P. Friedman; Richard Evanns
for Plaintiff and Respondent.

Plaintiff Xia Sun (Sun) obtained a \$545,000 judgment against defendant Ju-Tsun (George) Chang (Chang), and subsequently secured an order assigning rents from real property owned by Chang to satisfy the judgment. Chang then made a motion to vacate the assignment order, urging that he had not been properly served with the assignment motion and was no longer the record owner of the real property. The trial court denied the motion to vacate, and Chang appealed.

We affirm. In the trial court, the only statutory authority Chang cited in support of his motion to vacate the assignment order was Code of Civil Procedure¹ section 1008; and, as we discuss below, an order denying a section 1008 motion is not appealable. But even if we construe Chang's appeal to be from an order denying a motion to vacate under section 473, subdivision (d), which is an appealable order, the appeal nonetheless fails on the merits. Substantial evidence supports the trial court's finding that Chang was properly served with the assignment order; and Chang lacks standing to assert error on behalf of his sister, who Chang claims is now the record owner of the real property. Accordingly, there is no basis on which to reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Assignment Order

Sun sued Chang, a former business associate, for a variety of torts arising out of their business dealings. Following a jury trial, the trial court entered judgment for Sun in the amount of \$545,000, plus costs.²

¹ All subsequent undesignated statutory references are to the Code of Civil Procedure.

² Chang has separately appealed from that judgment.

In February 2018, Sun moved pursuant to section 708.510³ for an order assigning to her the right to receive money paid to, on behalf of, or for the benefit of Chang from (1) Min Maw International, Inc. (Min Maw), of which Chang was the sole officer, president, and agent, (2) tenants in the warehouse property located at 18350 East San Jose Avenue in the City of Industry (the East San Jose Avenue property or the property), and (3) any other person or entity. In support, Sun asserted that the East San Jose property's grant deed established that Chang was its 40 percent owner, and Chang's bank records showed that until March 2017, Chang had deposited his portion of the rents into Min Maw's bank account.⁴ Sun asserted that she therefore was entitled to assignment of this income stream until the judgment was satisfied.

Chang did not file opposition to the assignment motion. On March 20, 2018, the trial court signed an order granting the motion and assigning to Sun "payments of money or money equivalents, due or becoming due in the future, to debtor Ju-Tsun aka George Chang ('Debtor'), or which are payable [to] or to be paid for the benefit of or on behalf of [Chang] from the following

³ Section 708.510 provides, in relevant part, as follows:
“(a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor . . . all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments: . . . [¶] [r]ents.
[¶] (b) The notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail.”

⁴ The motion asserted that in March 2017, the month after judgment was entered, Chang stopped depositing rent from the property into Min Maw's account.

sources: [¶] All monies paid to Debtor by Min Maw International Inc. and all dbas/akas of Min Maw International Inc.; [¶] 40% of any rent and/or lease payments paid by any persons or entities who are tenants/ leaseholders/subtenants/sublettors in the warehouse property at 18350 E. San Jose Ave in the City of Industry . . . ; [¶] Any other person or entity, from which person or entity monies are due or coming due in the future to Debtor, which person or entity is served with a copy of this order.”

II.

Motion to Vacate Assignment Order

On April 13, 2018, Chang and Min Maw (sometimes referred to collectively as Chang) filed an ex parte application to vacate the assignment order. The court scheduled the matter to be heard by noticed motion.

On June 8, 2018, Chang filed a noticed motion to vacate the assignment order. Chang asserted that in February 2017, he had transferred his interest in the East San Jose property to his sister, Lin Min Chang (Lin Min), “in settlement of a debt owed by Ju-Tsun Chang to his family members, including Lin Min Chang,” and “no assignment order can be made to assign rents from [the] property of one who is not a judgment debtor.” Chang further asserted that neither he nor Lin Min had been validly served with the assignment motion because no effort had been made to serve Lin Min, and the locations where service was effected were “not Ju-Tsun Chang’s residence or place of business.” Specifically, Chang asserted that he did not live at the residential property where Sun attempted to serve him, and the East San Jose Avenue property “is a commercial property, namely a warehouse, and Ju-Tsun Chang does not live there.” Finally, Chang asserted that the trial court had the power to reconsider its assignment order pursuant to section 1008, which he said “provides statutory authority for this Court to reconsider

a motion previously ruled upon.” Chang acknowledged that a motion to reconsider under section 1008 normally must be brought within ten days of the prior order, but he urged that the ten-day limit did not apply in the present case because notice of entry of the order had not been served.

In support of the motion, Chang submitted a grant deed, signed on January 10, 2017 and recorded on February 6, 2017, stating that Chang granted to Lin Min “all of [Ju-Tsun] Chang’s title and interest in the” East San Jose Avenue property “to secure a debt.” The grant deed cited section 11921 of the Revenue and Taxation Code, which provides that a documentary transfer tax “shall not apply to any instrument in writing given to secure a debt;” and it stated that no tax had been paid in connection with the transfer.

Sun opposed the motion to vacate. She contended that Chang had been served by mail at the East San Jose Avenue property; at the time of service, Min Maw’s company name was prominently displayed on the property’s exterior; service of enforcement documents after entry of judgment is governed by section 684.120, which permits service of a judgment debtor “at the person’s current mailing address if known or, if unknown, at the address last given by the person on any paper filed in the proceeding and served on the party making the service;” and Chang’s request for relief pursuant to section 1008 was untimely. She further contended that the alleged grant deed “to secure a debt” was a mortgage, which did not convey title; and if Chang was no longer the record owner of the property, as he contended, he lacked standing to challenge the assignment order.

In support, Sun’s attorney, Richard Evanns, declared that on February 23, 2018, Chang was mail-served at the property with the motion for assignment order, and a copy of the motion was personally dropped off at the property the same day. Process

server David Doyle declared that he personally left a copy of the motion at the property on February 23; at that time, the property had Min Maw's company name prominently displayed outside. Finally, Sun sought judicial notice of the Los Angeles County Registrar-Recorder's Office's website stating that the County assesses a documentary transfer tax on the value of real property conveyed at the rate of \$0.55 per \$500.

On June 29, 2018, Chang filed a supplemental declaration, which stated as follows:

"2. . . . The first address whereat Sun claimed I was served is 18350 East San Jose Avenue, City of Industry, CA 91748 Currently I do not live or work at . . . [this] address[]. I did not live or work at [this address] back in January, February or March [of] this year. These two addresses whereat Sun claimed I was properly served whether in person or by mail, are not my dwelling house, usual place of abode, usual place of business, or usual mailing address.

"3. The [property] used to be my company's office and warehouse before my famil[y] obtained title of my shares of this property in or about January, 2017, in satisfaction of the lien for goods and money extended to me as a loan throughout the past fifteen years. I have moved out from this building since October, 2017 due to the failure of my business, Min Maw International, Inc. I have no money to continue operating the business and also knowing that my famil[y] intended to take back this property from me to repay part of the loan of over five million dollars.

"4. After I moved out, I did not remove the sign on the building because that also requires some money to do it. I left it for the owners to take care of. However, I no longer run any business in that building. After I moved out, I only went back there a couple of times just to clean up the unit. My company was formally dissolved on or about January 16, 2018. Attached

hereto is a true and correct copy of the Certificate of Dissolution of Min Maw International, Inc. filed with the Secretary of State of California on or about January 16, 2018.”

III.

Hearing and Order

At the July 9, 2018 hearing, attorney Gary Hollingsworth, who identified himself in the motion papers as counsel for Chang and Min Maw, introduced himself as counsel for Chang and Lin Min. This colloquy followed:

“The Court: . . . So, Mr. Hollingsworth, you identify yourself as the attorney for Min Maw International and Ju-Tsun Chang, but you purport to bring this motion also on behalf of Ju-Tsun Chang and Lin Min Chang. But I don’t see how you can bring the motion on behalf of Lin Min Chang. Per your moving papers, you don’t represent her, or at least on this motion.

“Mr. Hollingsworth: No. I do represent her. I mean, she’s listed on—

“The Court: That’s not what it says on your motion.

“Mr. Hollingsworth: Well, that’s just a—I don’t know. I mean, it’s just a captioning issue.

“The Court: Well, it’s not just the caption. When you sign your name, you sign it as attorney for Min Maw International . . . and Ju-Tsun Chang.

“Mr. Hollingsworth: I mean, I am representing her, Your Honor. I could put her in the caption. I think that’s just a formality. I mean, she’s listed as a party bringing the motion.

“The Court: No, she’s not. You signed the motion not on her behalf. You signed the motion on behalf of Min Maw and Ju-Tsun. She hasn’t appeared on this motion.

“Mr. Hollingsworth: She’s listed on the notice of motion as one of the parties bringing the motion.

“The Court: But who is representing her? It doesn’t say. So your position is that I should just overlook that as a technicality of no importance?

“Mr. Hollingsworth: Correct.

“The Court [to Sun’s counsel]: Okay. What do you two say about that?

“Mr. Evanns: I would only say that I think it’s not a technicality of no importance. Because in muddling it this way, what they’re essentially doing is having their cake and eating it too. They’re bringing a motion and letting her kind of appear. Except we can’t serve her. We don’t have any declaration from her, any address. And we don’t have, like, a real appearance on the record. She never paid a first appearance fee. So I’m not sure we can serve her with anything. [¶] And . . . she hasn’t appeared in the action. And I don’t think standing . . . is ever a technicality. [¶] . . . [¶]

“The Court: Okay. I do think it has to be seen as more than just a mistake. It may have been a mistake. I don’t have any ability to determine if there was any nefarious motivation behind it or not and I’m not going to find that there was one. But I find that she’s not represented on this motion by the terms of the motion papers.”

The court then addressed the merits of the motion: “[The] grant deed by its terms is a conveyance to secure a debt. And as the opposing parties pointed out, there’s no documentary transfer tax which would also tend to suggest that it’s not an actual transfer of the property. [¶] The motion fails to establish a lack of service as I’ve just been talking about. And in the supplemental declaration, which seeks to add a bit more to that, there’s just unsupported denial, unsupported sort of alternative scenario or alternative facts. So I think essentially what the motion amounts to is an untimely motion for reconsideration.

Plus, since Min Maw and Ju-Tsun assert no ownership interest in the property, it seems to me they have no standing in bringing the motion. [¶] For those various reasons, my tentative ruling is to deny.”

On August 17, 2018, the court signed an order denying the motion to vacate. On October 3, 2018, Chang filed a notice of appeal from the August 17 order.

DISCUSSION

Chang contends that Sun did not properly serve him or Lin Min with the assignment motion, and thus the assignment order, entered without proper notice, is void. On the merits, he urges that the trial court erred in assigning rents from the property to Sun because Chang is no longer the record owner of the property. Sun responds that Chang has purported to appeal from a nonappealable order; the trial court did not abuse its discretion by finding that Chang was properly served with the assignment order; and to the extent the appeal purports to raise issues relevant to Lin Min, it is not properly before the court.

We begin by considering whether Chang’s appeal is from an appealable order. In the trial court, the only statutory authority Chang cited in support of his motion to vacate the assignment order was section 1008, which permits a party affected by an order to “within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order.” (§ 1008, subd. (a).) But as Sun correctly notes, an order denying a motion for reconsideration pursuant to section 1008 is not an appealable order; instead, the denial of the motion for reconsideration is reviewable as part of the appeal from the underlying order. (§ 1008, subd. (g); *Austin v. Los Angeles Unified School Dist.*

(2016) 244 Cal.App.4th 918, 927, fn. 6.) Because Chang did not appeal from the assignment order, the order denying Chang's request to reconsider the assignment order is not properly before us.

Notwithstanding his reliance in the trial court on section 1008, Chang now contends that his motion "was not based on C.C.P. sec. 1008" but, instead, on the court's "inherent power to vacate a void judgment." Although Chang cites no statutory support for this assertion, we note that the trial court is empowered by section 473, subdivision (d), to set aside a void judgment or order, and an order denying a motion under section 473 is appealable. (§§ 473, subd. (d), 904.1, subd. (a)(2); *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 1004, 1009.) Thus, if construed as a section 473, subdivision (d) motion to vacate, the order denying the motion is appealable.

Even if the order denying the motion to vacate is properly before us, however, the appeal fails on the merits. Chang first asserts that the assignment order is void because it was entered without notice to him. But Chang made precisely the same claim in the trial court—namely, that he could not have been lawfully served at the property because it was not his usual business or residential address—and the trial court resolved the factual issue against him. Chang's failure to fairly discuss the contrary evidence on which the trial court relied forfeits his evidentiary points (*Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 940); and, in any event, we necessarily defer to the trial court's resolution of any factual conflicts in the evidence (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 597–598; *Fernandes v. Singh*, at p. 940; *Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318–1319). Chang's claim that he was not properly served, thus, is without merit.

Chang next contends that the assignment order is void because it was not served on Lin Min. Chang lacks standing to raise this issue because it implicates Lin Min's due process rights, not Chang's. (See, e.g., *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1001 [“ ‘A person who invokes the judicial process lacks standing if he, or those whom he properly represents, “does not have a real interest in the ultimate adjudication because [he] has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented.” ’ ”]; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035 [“ ‘An appellant cannot urge errors which affect only another party who does not appeal.’ ”]; *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261 [same].) Lin Min would have standing to raise the issue, but she was not a party to the proceeding below, and she has not properly appealed. As the trial court noted, Lin Min did not personally appear, and although attorney Gary Hollingsworth purported to appear below on her behalf as well as on Chang's, he never submitted any documentation indicating that Lin Min retained him as her counsel. So too on appeal: Although the notice of appeal purports to identify Lin Min as an appellant, it was filed by attorney Hollingsworth, who identified himself as counsel for only Chang and Min Maw. Because Lin Min thus is not a proper party to this appeal—and because Chang does not have standing to raise any asserted lack of notice to Lin Min—we cannot consider any service issues as they relate to Lin Min.

Finally, Chang contends that the trial court erred in finding that he, not Lin Min, owned the East San Jose Avenue property. This issue, too, is not properly before us. If the property was effectively transferred to Lin Min, as Chang asserts, then Lin Min is the only party injured by the assignment

order. Indeed, if Chang does not own the property, then the assignment of rents from the property to satisfy Chang's debt to Sun does not harm Chang—it benefits him. As we have said, Lin Min has not properly appealed, and Chang lacks standing to assert errors that are alleged to affect only Lin Min. We therefore do not address this issue on the merits.

DISPOSITION

The order denying the motion to vacate is affirmed. Sun is awarded her appellate costs.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.